

TITLE 1. ADMINISTRATION

Part 8. TEXAS JUDICIAL COUNCIL

Chapter 174. INDIGENT DEFENSE POLICIES AND STANDARDS

The Task Force on Indigent Defense (Task Force) is a permanent Standing Committee of the Texas Judicial Council. The Task Force adopts new §§174.1 – 174.4 concerning the establishment of minimum training requirements for attorneys to represent indigent criminal defendants and juvenile respondents. The new sections are adopted without changes to the adopted text as published in the November 8, 2002 of the *Texas Register* (17 TexReg 10520). The Texas Judicial Council pursuant to Section 71.060(b), Government Code, ratified the new sections on April 1, 2003.

The new sections are adopted to establish minimum continuing legal education training requirements for attorneys to be eligible for appointment in criminal and juvenile cases. As an alternative to meeting the continuing legal education requirements, the rules allow an attorney to be currently certified in criminal or juvenile law by the Texas Board of Legal Specialization. The rule also allows another attorney to be appointed if no attorney who meets the continuing legal education or board certification requirements is available by the time an attorney must be appointed in the case.

No comments were received regarding adoption of the rules.

Subchapter A. MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS

1 TAC §§174.1 - 174.4

The new rules are proposed under the Texas Government Code §71.060(a)(2)(C). The Task Force interprets §71.060(a)(2) as authorizing the Task Force to develop policies and standards for providing legal representation to indigent defendants including qualification standards under which attorneys may qualify for appointment to represent indigent defendants. The Task Force further interprets §71.060(a)(2)(C) to authorize the Task Force to set specific qualification standards related to completion of minimum continuing legal education programs.

No other statutes, articles, or codes are affected by the proposed new rules.

§174.1. Appointment in Criminal Cases. An Attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible under the procedures developed under Article 26.04, Code of Criminal Procedure. Crime has the meaning assigned by §173.2(2). An attorney may be appointed under this rule only if an attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period. The judges of criminal

- courts of the county shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. The judges may require attorneys to complete more than the minimum number of hours of continuing legal education in criminal law in the procedures developed under Article 26.04, Code of Criminal Procedure; or
- (2) Is currently certified in criminal law by the Texas Board of Legal Specialization.

§174.2. Appointment in Juvenile Cases. An attorney who meets the requirements of this rule may be appointed to represent an indigent juvenile detained for or accused of engaging in delinquent conduct or conduct indicating a need for supervision, if the attorney is otherwise eligible under the plan developed under Section 51.101, Family Code. An attorney may be appointed under this rule only if an attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period. The juvenile board shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. A juvenile board may require an attorney to complete more than the minimum number of hours of continuing legal education in juvenile law in the plan developed under Section 51.101, Family Code; or
- (2) Is currently certified in juvenile law by the Texas Board of Legal Specialization.

§174.3. Reporting Period.

- (a) Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirement for the initial year.
- (b) Continuing legal education activity completed during any reporting period in excess of the minimum six-hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

§174.4. Emergency Appointment. If no attorney who meets the continuing legal education or board certification requirements contained in this Subchapter is available by the time an attorney must be appointed in the case, another attorney may be appointed. The person making an appointment under this Section shall give priority to an attorney with experience in criminal or juvenile law, respectively.

The Task Force hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.